

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION**

**SHELTER INSURANCE COMPANY,
BARBARA STEWART and GEICO GENERAL
INSURANCE COMPANY**

PLAINTIFFS

V.

1:03CV592

MERCEDES BENZ, U.S.A.

DEFENDANT

ORDER

This cause comes before the Court on the defendant's motion to dismiss Geico General Insurance Company ("Geico") as a plaintiff in the above-styled case [91-1]. The defendant avers that dismissal is appropriate pursuant to Rules 37 and 41(b) of the Federal Rules of Civil Procedure and Rule 37.1 of the Uniform Local Rules because of Geico's failure to prosecute its claim and for discovery violations. Geico did not initially file this lawsuit, but rather joined later as a party-plaintiff seeking recovery for the amount it paid co-plaintiff Barbara Stewart to replace her Mercedes vehicle which was destroyed on November 21, 2001 in the events underlying this suit. Since then, Geico has apparently done nothing to advance its claims or to participate in this lawsuit. The defendant avers that Geico has not complied in any way in its discovery obligations in this action, that Geico has never served its Rule 26(a) core disclosures or responses to the defendant's discovery requests, both of which are, as of this writing, more than ten months overdue. Geico has failed to produce a witness or deponent pursuant to Rule 30(b)(6), and it has identified only one witness with relevant information, Geico employee Kate Cooper. Geico cancelled Cooper's deposition twice. Finally, Geico has not even responded to the instant motion to dismiss.

It is well established that a district court may dismiss an action, even sua sponte, for failure

to prosecute or to comply with any court order. See Fed. R. Civ. P. 41(b); McCullough v. Lynaugh, 835 F.2d 1126, 1127 (5th Cir. 1988). Although dismissal of a party is a harsh action, it clearly seems warranted in the case at bar, at least according to the unanswered allegations of the defendant.

Accordingly, it is hereby ORDERED that the plaintiff Geico shall have ten (10) days from the entry of this order in which to enter a response to the motion to dismiss. Failure to respond within that time will result in dismissal of Geico's claims in this case.

This is the 9th day of November, 2005.

/s/ Michael P. Mills
UNITED STATES DISTRICT JUDGE